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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 DOUGLAS E. GALLAGHER,

7 Plaintiff,

8 v.

9 DEPARTMENT OF CORRECTIONS,

10 Defendants.

Case No. C16-5088 RBL-TLF

ORDER DENYING MOTION FOR
RELIEF FROM DISPOSITIVE
MOTION DEADLINE, DKT. 100

11 Before the Court is defendants' motion for relief from the dispositive-motion deadline,
12 Dkt. 100. The deadline for dispositive motions was August 2, 2018. The Court will deny
13 defendants' motion for relief from that deadline.

14 Plaintiff filed a complaint in state court on December 31, 2015. Dkt. 1-2. The case was
15 removed to this Court on February 5, 2016. Dkt. 1.

16 On December 11, 2017, the scheduling order was amended, setting the discovery
17 deadline for June 1, 2018, and the dispositive motions deadline for July 9, 2018. Dkt. 78.
18 Plaintiff disclosed his expert witnesses on April 12, 2018, including James Flowers, M.D., Dkt.
19 80. In May 2018, defendants asked to depose Dr. Flowers and learned that he would not be
20 available for a deposition until September 2018 at the earliest. Dkt. 101. The discovery deadline
21 passed on June 1. See Dkt. 78.

22 On June 28, 2018, the dispositive motions deadline was extended to August 2, 2018. Dkt.
23 86. On August 2, plaintiff moved for partial summary judgment. Dkt. 95. Plaintiff states that on
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1 August 17, 2018, defendants informed plaintiff that they intended to move for relief from the
2 discovery deadline because they had not yet deposed Dr. Flowers, and that plaintiff agreed he
3 would stipulate to such a motion. Dkt. 108, p. 2; *see* Dkt. 101, p. 2 (stating that plaintiff
4 stipulated continuing plaintiff's summary-judgment motion so defendant could depose Dr.
5 Flowers).

6 On August 31, 2018, defendants informed plaintiff they intended to move to extend the
7 dispositive motion deadline. Dkt. 109. On September 7, 2018, they filed that motion. Dkt. 100.
8 Plaintiff opposes it. Dkt. 108.

9 This Court has inherent authority to manage its docket. *United States v. W.R. Grace*, 526
10 F.3d 499, 509 (9th Cir. 2008) (en banc).

11 Federal Rule 6(b)(1)(B) provides that "[w]hen an act . . . must be done within a specified
12 time, the court may, for good cause, extend the time . . . on motion made after the time has
13 expired if the party failed to act because of excusable neglect." Fed. R. Civ. P. 6(b)(1)(B).

14 To determine whether neglect is excusable, the Court balances four factors: "(1) the
15 danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on
16 the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith."
17 *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223-24 (9th Cir. 2000) (citing *Pioneer Inv. Servs.*
18 *Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993)).

19 Taken together, these factors indicate that defendants' failure to file a motion for
20 summary judgment or move for an extension by the August 2, 2018, deadline was not due to
21 excusable neglect.

22 Plaintiff concedes that defendants acted in good faith in filing their motion. Dkt. 108.
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1 Defendants assert as the reason for their delay that they have not deposed Dr. Flowers,
2 and that once they do so they may find grounds to move for summary judgment. They point out
3 that this could obviate the need for a trial. Defendants' need to depose Dr. Flowers is clear. But
4 they do not explain why they could not have moved for an extension to the dispositive-motion
5 deadline at any point between May 2018—when they learned that they would not be able to
6 depose Dr. Flowers until September 2018—and the August 2, 2018, deadline. The reason for
7 delay thus weighs in favor of denying the motion.

8 The factors of delay and prejudice also favor denial. Granting the motion will likely
9 prolong the pretrial stage of this case for over two months while the parties submit additional
10 briefing. Defendants contend that there is no prejudice to plaintiff from extending the
11 dispositive-motion deadline because no trial date has been set. But given that plaintiff filed his
12 complaint well over two years ago, plaintiff is correct that at this stage further significant delays,
13 without good reason, are themselves prejudicial to plaintiff.

14 Accordingly, defendants' motion for relief from the dispositive motion deadline, Dkt.
15 100, is DENIED.

16 Dated this 1st day of October, 2018.

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Theresa L. Fricke
20 United States Magistrate Judge
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